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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,492	03/09/2001	Stephen Belth	12166-0002	7458
7590	10/22/2007		EXAMINER	
Intellectual Property Group Bose McKinney & Evans LLP Suite 2700 135 North Pennsylvania Street Indianapolis, IN 46204			LE, KHANH H	
			ART UNIT	PAPER NUMBER
			3622	
			MAIL DATE	DELIVERY MODE
			10/22/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/802,492	BELTH, STEPHEN
	<b>Examiner</b>	<b>Art Unit</b>
	Khanh H. Le	3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 09/18/2006.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-3,5-9,11,12,21-26 and 32-48 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,5-9,11,12,21-26 and 32-48 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 03/09/2001 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

1. This office Action is responsive to the Correspondence dated 09/18/2006 (herein the "Response").

**Status of claims:** Claims 1-3, 5-9, 11-14, 16-19, 21-30, and 32-38 were pending. Claims 13, 14, 16-19, 27-30 are cancelled. Many claims are amended. New claims 39-48 are added. Thus claims 1-3, 5-9, 11-12, 21-26 and 32-48 are pending. Claims 1, 12, 21, 32, and 36 are independent.

(New claims 39-43 are dependent on claim 1. New claims 44-48 are dependent on claim 21.)

### *Drawings*

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims.

**Therefore, the various load, go, tell target actions and the sequence of their insertions must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. In addition any prior art should be so indicated.**

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject

matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made:

**4. Claims 1-3, 5, 7-9, 11, 21-26, and 32-38, 39-48 are rejected under as being unpatentable over Tiley et al, US 7,020,623, herein Tiley, in view of the general level of skill regarding Macromedia Flash.**

**Claims 1-2, 5, 21-22, and 32-33:**

Tiley discloses a method of inducing a purchaser to visit a retail outlet at a remote location and of inducing a retail outlet to act as such a remote location wherein textual, audio or video targeted e-mail messages are directed to individuals (col. 4 lines 36-58) and/or wherein individuals are directed to individual web pages to view ads (col. 15 lines 45 to col. 16 line 7).

Thus Tiley discloses

A marketing system for communicating with a targeted individual, the marketing system, comprising:

a processor;

a database accessible by the processor including data related to the targeted individual ( see col.15 line 62+ ) and an identifier (col. 17 lines 10-17 ) ;

a resource including an address and an input (at least a web page for the user to place an order) (see at least Figs. 1-2 and associated text; col. 19 lines 50-57); and

the processor adapted to present the targeted individual with a resource or media (the email) , the resource or media (the email) including an audio component (col. 4 lines 36-58), the audio component targeted to the individual wherein the media is presented in response to the identifier being provided to the input of the resource. (see at least Figs 1-4 and associated text; col. 4 lines 36-58; col. 19 lines 50-57: the email is in response to an order placed at a webpage in which the customer inputs his identifier such as a name).

Tiley further discloses the marketing email has a generic marketing portion (col. 17 lines 40-62, especially line 5: generic ad to all purchasers) and a “tailored portion configured based on the data related to the targeted individual (col. 17 lines 55-62: “merging ...into individualized advertising or email,..including references to purchaser by name ”. It is interpreted the Tiley customer name is derived from a customer database).

Tiley does not specifically disclose the marketing audio component has a generic marketing portion and a “tailored portion configured based on the data related to the targeted individual” and “the first targeted portion including an audio recording of the name of the targeted individual”.

**However, Tiley teaches audio components in emails (col. 4 lines 36-58).**

It would have been obvious to one skilled in the art at the time the invention was made (herein a “PHOSITA”) to add to Tiley’s email marketing audio component, a generic marketing portion and a “tailored portion configured based on the data related to the targeted individual” and “the first targeted portion including an audio recording of the name of the targeted individual” to allow personalizing the audio part of the marketing email, in the same manner and for the same advantages, as was done with the textual part (Tiley, col. 17 lines 55-62: “merging ...into individualized advertising or email,..including references to purchaser by name ”).

As to *“the processor further adapted to:*

*load the first generic portion and insert a first go action preceding and a first tell target action following the first generic portion;*

*load the first tailored portion and insert a second go action preceding and a second tell target action following the first tailored portion; and interlace the first generic and first tailored portions in forming the audio component,”*

Load, Go and tell target actions are basic commands used in Macromedia Flash.

Tiley as modified above does not disclose using Macromedia Flash to make its audio or video emails.

However use of Macromedia Flash in emails, to include video, audio, and animation, is known before invention time.

(See e.g. “Flash Your E-mail”,  
<http://web.archive.org/web/20010429100504/http://www.webreference.com/multimedia/flash/email/>).

It would have been obvious to a PHOSITA to add Macromedia Flash to the Tiley’s emails, to include interactive multimedia therein.

Next, what is claimed, in the above claims, is essentially a series of presentation portions, some generic, some tailored. There’s a load command of one portion, a go action at start of the portion, then a tell target command at end of the portion, then a repeat of the same, claimed as “interlacing” the generic and tailored portions.

Tiley modified as above discussed does not disclose Load, Go and tell target actions.

However, the Load, Go and tell target actions are common commands used in Macromedia Flash to allow control of segments of multimedia.

**See for example:**

**Bazan et al, US 20020023081** which discloses a high quality multimedia presentations made of many segments, by placement of specific commands within the multi media including tell target and load movie commands (abstract, Figures 2 and 3, [0025], [0026], [0036]-[0038]). Tell target commands are to signal the client to begin playing a different segment of the presentation [0036]. Load commands are to instruct the system to look forward to the next segment at some point in a present segment to allow downloading of the next segment while user is viewing a current segment [0036].

**Flash 5: Graphics, Animation and interactivity by James L. Mohler (copyright 2001)**, (a copy of pages 214-240 is included) which teaches load movie actions (p. 222-223); tell target to control movie clips, play, stop and go to (to jump to specific frame) actions (p. 275-279).

**The Complete Idiots Guide to Macromedia Flash 5 by David Karlins (copyright 2001)**, (pages 163-164, 213-223, 224-233 being included) discloses load movie actions (p. 229) Go to and play actions (p.163-164); sound files in Flash movies (p. 214-217); conditional Flash actions (p. 227-230 ; 231-232).

**George Penston, The Creative Toolbox: One Approach to Mastering Flash**  
**Contributing editor George Penston leads Flash newbies to higher knowledge along the trail of the Tell Target command, Wednesday, July 5, 2000 (downloaded from <http://www.creativepro.com/printerfriendly/story/6782.html>),** (which teaches using the Tell Target commands to allow control of even deeply nested Movie Clips in a main movie in a hierarchical manner (page 1). Tell Target commands are used to control a series of movie clips in a timeline to play at specific time point (page 2). Begin Tell Target commands, Play, Stop, End On (Tell target) commands are taught (page 2). )

**Philip Kerman, A meaningful conversation between Javascript and Flash, Macromedia User journal, July 1999 issue. ( Downloaded from [http://www.phillipkerman.com/ff2000sf/muj\\_reprint.pdf](http://www.phillipkerman.com/ff2000sf/muj_reprint.pdf) ),** (5 pages) which teaches a Tell Target command consisting of Load, Go To, Play and StopPlay commands (page4).

**Flash Bible, Introduction to Tell Target ,**  
<http://web.archive.org/web/20000829071900/http://www.flashbible.com/members/TellTarget/> (which teaches that the Tell Target Action is the way a Flash movie communicates instructions to the movie clips (a movie set within a main movie) it contains and the separate movies it has loaded into Levels.)

In view of the level of skill in the art regarding **Macromedia Flash** demonstrated at least in thereferences listed above, it would have been obvious to a PHOSITA to add to TILEY MODIFIED AS ABOVE DISCUSSED the commands of loading the generic then the tailored portion, inserting go actions preceding each, tell target actions following each, and repeating the process as necessary in order to seamlessly control loading and presenting sucessive segments.

A PHOSITA would have known to manipulate and set up the Flash commands as necessary, depending on the path to use for a given relationship between movie (including audio portions), movie clip and loaded movie. If there is a succession of several generic and tailored portions, to form the movie and/or audio component, the process obviously would have been repeated, thereby “interlacing” the portions.

**Claims 3, 23, 34-35:**

TILEY MODIFIED AS ABOVE DISCUSSED discloses the system or method of claims 2, 22 or 33 but does not specifically disclose such second tailored portion is an audio part.

However, TILEY discloses the message includes a (second) tailored portion based on a first value of a first characteristic of the targeted individual, for example what she just purchased (see TILEY col. 17 lines 58-60). Further, Tiley teaches audio components in emails (col. 4 lines 36-58). It is thus obvious, from all these teachings in TILEY, in case an audio component is used in emails, that the second tailored portion would be an audio portion to allow personalizing the audio part of the marketing email, in the same manner and for the same advantages, as was done with the textual part (Tiley, col. 17 lines 55-62).

Selecting a recording from a plurality of audio recordings for delivery of the one recording is further commonly done. It would then be obvious that such a second audio recording would be selected from a plurality of audio recordings to effect delivery of the audio part.

**Claims 7-9, 11, 24-26:**

TILEY MODIFIED AS ABOVE DISCUSSED discloses the system or method of claims 1 or 21 but does not specifically disclose a marketing visual component with a generic marketing portion in addition to a tailored portion.

However, Tiley discloses video ( "a visual component") targeted e-mail messages are directed to individuals (col. 4 lines 36-58) wherein individuals are directed to individual web pages to view further ads (col. 15 lines 45 to col. 16 line 7; col. 16 lines 19-32).

Tiley also discloses personalized emails as discussed above with merged personalized portions.

Thus it would be obvious, from the previously discussed Tiley's teachings, to add to Tiley's marketing visual component, a generic marketing portion in addition to a tailored portion including a visual component to allow personalizing the visual part of the marketing email, in the same manner and for the same advantages, as was done with the textual part (Tiley, col. 17 lines 55-62).

As to "*the processor further adapted to:*

*load the first generic portion and insert a first go action preceding and a first tell target action following the first generic portion;*  
*load the first tailored portion and insert a second go action preceding and a second tell target action following the first tailored portion; and interlace the first generic and first tailored portions in forming the audio component,*"

**See discussion of independent claims 1, 21 or 32 above. The instant claims are rejected based on the same reasoning.**

**(Other additional limitations of the dependent claims 8-9, 25-26 common to those of claims 2-3, are rejected on the same basis).**

**Independent claim 36 and dependent claims 37-38:**

These claims essentially have the same features as claims 7-9, 11, 24-26 above and are rejected on the same basis. See claims 7-9, 11, 24-26 above.

**Claims 39, 44:**

TILEY MODIFIED AS ABOVE DISCUSSED discloses the system or method of claims 1 or 21 but does not disclose:

when the first generic portion precedes the first tailored portion in the audio message, creating the first tell target action to direct play to the second go action; and when the first tailored portion precedes the first generic portion in the audio message, creating the second tell target action to direct play to the first go action.

However as discussed in claim 1 in view of how the TELL TARGET and go actions work, it would have been obvious to a PHOSITA, to use those commands as claimed to effect controlling playing the generic portion and the first tailored portion in either order, as desired.

**Claims 40, 45:**

TILEY MODIFIED AS ABOVE DISCUSSED discloses the system or method of claims 39 or 44 but does not disclose:

inserting a stop action; and  
when the first generic portion precedes the first tailored portion, creating the second tell target action to direct play to the stop action; and  
when the first tailored portion precedes the first generic portion, creating the first tell target action to direct play to the stop action.

However as discussed in claim 1, in view of how the TELL TARGET and stop actions work, it would have been obvious to a PHOSITA, to use those commands as claimed, to effect controlling playing the generic portion and the first tailored portion in either order, as desired, and to cause stopping after the desired portion has been played, in either sequence.

In other words, since a stop action is to instruct stop playing, it would be obvious to have the sequence of the second tell target action (which follows the tailored portion) directing play to the stop action, to stop playing after both generic and tailored portions have been played. Conversely, when the sequence is tailored portion is to be played before the generic portion, it would have been obvious to have the 1<sup>st</sup> TELL TARGET (which follows the generic portion) direct to the stop action so that playing stops after the generic portion has been played.

**Claims 41, 46:**

TILEY MODIFIED AS ABOVE DISCUSSED discloses the system or method of claims 1 or 21 but does not disclose:

loading an optional tailored portion in the audio message that only plays when a predefined condition is met;  
inserting a third go action preceding and a third tell target action following the optional tailored portion; and  
interlacing the optional tailored portion with the first generic and first tailored portions.

However inserting an optional tailored portion is matter of design. A PHOSITA would have been motivated to include such portion if the message is desired to be even more specific to end user. Inserting it with the other portions (i.e. interlacing) in a specific order is also matter of design, which would obviously be dictated by, e.g., the logical content of the message.

Inserting go preceding and 3<sup>rd</sup> TELL TARGET following, would have been obvious to a PHOSITA, in view of the level of skill regarding Macromedia Flash, as discussed before, to seamlessly control the playing of the portions when an optional tailored portion is included.

**Claims 42, 47:**

TILEY MODIFIED AS ABOVE DISCUSSED discloses the system or method of claims 41 or 46 but does not disclose providing at least one of the tell target actions with logic to decide whether to include the optional tailored portion.

However, conditional Flash actions are known (see e.g. The Complete Idiots Guide, cited above, which teaches conditional Flash actions, e.g. If and Else actions at p. 227-230 ; 231-232). Thus it would have been obvious to a PHOSITA to apply conditional Flash actions to TILEY MODIFIED AS ABOVE DISCUSSED to allow deciding whether to include the optional tailored portion.

**Claims 43, 48:**

TILEY MODIFIED AS ABOVE DISCUSSED discloses the system or method of claims 1 or 21 and but does not disclose:

the audio message can potentially include a plurality of tailored portions, and the method further comprises providing at least one of the tell target actions with logic to decide which of the plurality of tailored portions to include in the audio message.

However as discussed above in claims 41 and 46, inserting an optional tailored portion is matter of design. A PHOSITA would have been motivated to include such portion if the message is desired to be even more specific to end user. The same applies to any number of additional tailored portions. A Phosita would have included any number of optional portions as the level of targeting of the message requires.

As to including the tell target actions with logic to decide whether to include the optional tailored portions, as above discussed, conditional Flash actions are known ( see e.g. The Complete Idiots Guide , p. 227-230 ; 231-232). Thus it would have been obvious to a PHOSITA to apply conditional Flash actions to the audio optional portions of the system of TILEY MODIFIED AS ABOVE DISCUSSED to allow deciding whether to include the optional tailored portions.

6. **Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tiley in view of Shane, US 5793972.**

**Claims 6 and 12:**

The features of claims 6 and 12 common to the claims above are rejected as above discussed.

Further, as to claims 6 and 12 which, in addition to the limitations common to the independent claims addressed above, further claim "the first media including the address of the resource and at least a first portion of the data in the database related to the targeted individual, the first portion including an identifier", and 'wherein the identifier is not a component of the address of the resource", it is interpreted that the first media here means an email is sent to the consumer with the Url of the site and an identifier for the user to use to access a special resource, such as a webpage.

Tiley discloses textual, audio or video targeted e-mail messages are directed to individuals (col. 4 lines 36-58) wherein individuals are directed to individual or specifically created web pages to view further ads (col. 15 lines 45 to col. 16 line 7; col. 16 lines 19-32). Tiley does not specifically disclose but Shane discloses use of Urls and unique user identifiers sent in regular mail or emails to direct users to personalized interactive webpages formed from the unique identifiers and correlated user data (abstract, Figs 1-2 and associated text ).

It would have been obvious to one skilled in the art at the time the invention was made to add these features of Shane to Tiley to effect the purpose disclosed in Tiley, i.e., to allow and encourage the purchaser to view those individual or specifically created websites web pages ( Tiley, col. 16 lines 1-5; col. 16 lines 19-32).

***Response to Arguments***

5. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cohn US 6317780, Meyer US 7188186, Plantec US 7253817, discloses flash in emails with ads.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 571-272-6721. The Examiner works a part-time schedule and can normally be reached on Tuesday-Thursday 9:00-6:00.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The fax phone numbers for the organization where this application or proceeding is assigned are **571-273-8300** for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3600. For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 17, 2007

KHL

*Class 17*

  
**JAMES W. MYHRE**  
**PRIMARY EXAMINER**